BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

RICKY GONZALES	)	
Claimant	)	
	)	
VS.	)	
	)	
CAPITAL ELECTRIC CONST. CO.	)	
Respondent	)	Docket No. 1,018,078
	)	
AND	)	
	)	
BUILDER'S ASSOC. SELF-INS. FUND	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier request review of the January 31, 2005 Preliminary Decision entered by Administrative Law (ALJ) Judge Robert H. Foerschler.

ISSUES

There was no dispute claimant suffered a work-related injury on September 26, 2003 when a 40-foot pole rolled on top of claimant's right hand. Respondent provided medical treatment, and on June 7, 2004, a right thumb arthroplasty with joint replacement surgery was performed. On June 9, 2004, after a follow-up visit with the doctor, the claimant struck his thumb on a doorframe at his home. The next day, claimant returned to the doctor, and it was determined the prosthetic ceramic ball joint had been displaced. Additional surgery was required to replace the ceramic ball, and when that again failed a third surgical procedure consisting of a ligament reconstruction was performed.

After the incident where claimant jammed his thumb on the doorframe at his home, the respondent declined to provide additional medical treatment. Respondent argued that when claimant struck his thumb at his home he suffered a non-occupational intervening accident, which did not arise out of and in the course of his employment. Consequently, respondent argued it was not responsible for medical treatment for that non-occupational

accident. Conversely, claimant argued that the subsequent surgery was a natural and probable consequence of his injury which had not healed.

The ALJ determined that a subsequent injury so soon after surgery coupled with the doctor's failure to adequately provide protection to the surgical site and to advise claimant how to avoid further injury combined to support a finding that the additional surgery was the responsibility of respondent.

The respondent requests review of whether the claimant suffered an intervening accidental injury out of and in the course of employment.

The issue before the Board is whether claimant's need for additional medical treatment was the direct result of his work-related accident or of an intervening injury at home.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The facts are not seriously disputed. After the initial surgery on claimant's thumb on June 7, 2004, his hand was placed in a plastic brace and wrapped with an Ace bandage. On June 9, 2004, claimant returned to the doctor for a scheduled follow-up appointment. At this time the dressing on the hand was changed, and a splint was reapplied.

Later that same day the claimant was leaving the bathroom at his home and struck his thumb on the doorframe. Claimant experienced an immediate onset of severe pain. He returned to the doctor the following day and, as previously noted, ultimately had two additional surgeries on his thumb with a fourth surgery being discussed.

The claimant testified that he was wearing the splint when the incident at home occurred, and he described the incident as just bumping his thumb into the doorframe with hardly any force at all. Conversely, Dr. O. Allen Guinn, lll, the treating surgeon, indicated that claimant provided a history that he struck his hand and described a severe hyperextension of the thumb, bending it backwards.

Claimant disputes that his thumb bent back and that the incident was best described as hitting the end of his thumb and jamming it. He noted that the splint would have prevented his thumb from bending backwards. Lastly, claimant denied telling Dr. Guinn that his thumb was bent backwards when he struck the doorframe.

Every direct and natural consequence that flows from a compensable injury, including a new and distinct injury, is also compensable under the Workers Compensation Act. In *Jackson*[1], the Court held:

> When a primary injury under the Workmen's Compensation Act is shown to have arisen out of the course of employment every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury. (Syllabus 1).

However, the *Jackson* rule does not apply to new and separate accidental injuries. In *Stockman*[2], the Court attempted to clarify the rule:

> The rule in *Jackson* is limited to the results of one accidental injury. The rule was not intended to apply to a new and separate accidental injury such as occurred in the instant case. The rule in *Jackson* would apply to a situation where a claimant's disability gradually increased from a primary accidental injury, but not when the increased disability resulted from a new and separate accident.

In *Stockman*, claimant suffered a compensable back injury while at work. The day after being released to return to work, the claimant injured his back while moving a tire at home. The *Stockman* court found this to be a new and separate accident.

In *Gillig*[3], the claimant injured his knee in January 1973. There was no dispute that the original injury was compensable under the Workers Compensation Act. In March 1975, while working on his farm, the claimant twisted his knee as he stepped down from a tractor. Later, while watching television, the claimant's knee locked up on him. He underwent an additional surgery. The District Court in *Gillig* found that the original injury was responsible for the surgery in 1975. This holding was upheld by the Kansas Supreme Court.

In *Graber*[4], the Kansas Court of Appeals was asked to reconcile *Gillig* and *Stockman*. It did so by noting that *Gillig* involved torn knee cartilage which had never properly healed. *Stockman*, on the other hand, involved a distinct reinjury of a back sprain that had subsided. The court, in *Graber*, found that its claimant had suffered a new injury, which was "a distinct trauma-inducing event out of the ordinary pattern of life and not a mere aggravation of a weakened back."

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[1] *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

[2] *Stockman v. Goodyear Tire & Rubber Co.*, 211 Kan. 260, 263, 505 P.2d 697 (1973).

[3] *Gillig v. Cities Service Gas Co.*, 222 Kan. 369, 564 P.2d 548 (1977).

[4] *Graber v. Crossroads Cooperative Ass'n*, 7 Kan. App. 2d 726, 648 P.2d 265, *rev. denied* 231 Kan. 800 (1982).

At the request of his attorney, claimant was examined by Dr. Lynn D. Ketchum on October 20, 2004. In a letter detailing the results of his examination and making treatment recommendations, the doctor noted in pertinent part:

> I have two opinions regarding this. One is that the second and third operations, and perhaps even a fourth, would not be necessary if it had not been for the first. Because the ball was in place (I have seen these balls dislocated and it does not take a lot to do that) the complications of that surgery were as a result of the surgery and would not have occurred if it had not been for the surgery. It is something that could happen to anybody - it was not the patient's fault.[5]

Here, the Board finds this circumstance to be more akin to that found in *Gillig*, rather than *Stockman*. Claimant's thumb condition had not resolved from his recent surgical repair, and Dr. Ketchum noted that the subsequent problems were something that could have happened to anybody as a consequence of the first surgical procedure.

In situations such as this, there is often a very fine line between what would be described as a new and separate accidental injury versus a natural consequence of the original injury. In this instance, based upon the record compiled to date, the Board finds that claimant's condition did arise out of his employment with respondent and is a natural consequence of the original injury with respondent. Accordingly, the Board affirms the ALJ's Order.

WHEREFORE, it is the finding of the Board that the Preliminary Decision of Administrative Law Judge Robert H. Foerschler dated January 31, 2005, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of April 2005.

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BOARD MEMBER

c: Mark E. Kolich, Attorney for Claimant
Wade A. Dorothy, Attorney for Respondent and its Insurance Carrier
Robert H. Foerschler, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

[5] P.H. Trans., Ex. 1 at 2.